



**Attorney General
Betty D. Montgomery**

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May 25, 1999

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Office of the Secretary
Magalie Roman Salas
Federal Communications Commission
445 Twelfth Street, N.W.
Portals II Building
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *In the Matter of Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996, CC Docket
No. 96-98.*

Dear Ms. Salas

Enclosed, please find the original and thirteen copies of the Comments of the Public Utilities Commission of Ohio in the above captioned matter.

Please return one stamped copy in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

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CC Docket No. 96-98

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FEDERAL COMMUNICATIONS COMMISSION
COMMENTS OF OFFICE OF THE SECRETARY
THE PUBLIC UTILITIES COMMISSION OF OHIO

I. INTRODUCTION AND BACKGROUND

On April 16, 1999, the Federal Communications Commission (FCC) released its Second Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-98 (CC 96-98) (In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996). In its NPRM, the FCC seeks comment on what incumbent local exchange carrier (ILEC)-provided unbundled network elements (UNEs) must be made available to their competitors. On January 25, 1999, the United States Supreme Court (Court) issued its decision in *AT&T Corporation v. Iowa Utilities Board*. In its decision, the Court upheld all but one of the local competition rules adopted in the FCC's local competition proceeding. The Court rejected, however, the FCC's network element unbundling rules set forth consistent with section 251(c)(3) of the Telecommunications Act of 1996 (1996 Act). Consequently, the Court vacated section 51.319 of the FCC's rules. Section 51.319, discussed below in more detail, set forth the minimum list of UNEs that

incumbent LEC must make available to requesting carriers pursuant to sections 251(c)(3) and 251(d)(2) of the 1996 Act.

The Court concluded that the FCC, in determining which network elements must be unbundled pursuant to section 251(c)(3), had not adequately considered the "necessary" and "impair" standards of section 251(d)(2). Section 251(c)(3) imposes a duty on all incumbent LECs to provide to competitors access to network elements on an unbundled basis. Section 251(d)(2) provides that, in determining which network elements should be unbundled, the FCC shall consider, "at a minimum, whether – (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network element would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

In its CC 96-98 Report and Order, released August 8, 1996, the FCC applied its interpretation of the "necessary" and "impair" standards of section 251(d)(2) to the unbundling requirements of section 251(c)(3). After addressing the "necessary" and "impair" standards, the FCC adopted rule 51.319. These rules required incumbent LECs to make available, on an unbundled basis, the following network elements: (1) local loops; (2) network interface devices; (3) local switching; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operations support systems; and (7) operator services and directory assistance.

In its NPRM, the FCC seeks comment to update the record in CC 96-98 on the issues of: (1) how, in light of the Court's ruling, the Commission should interpret the standards set forth in section 251(d)(2), and (2) which specific network elements the FCC

should require incumbent LECs to unbundled under section 251(c)(3).

The Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its response to the FCC's April 16, 1999, NPRM in CC 96-98.

II. DISCUSSION

As of January 1, 1999, the Ohio Commission has certified 14 competitive local exchange providers (CLECs), who have indicated in their respective Applications for Certification that they intend to operate as facilities-based local exchange providers. On May 7, 1999, the PUCO's staff issued a data request to facilities-based local exchange providers operating in Ohio requesting information on the status of UNEs purchased and provided in Ohio. While much of this information was considered proprietary by the companies submitting it, we can inform the FCC that two incumbent LECs operating in Ohio currently furnish UNEs to their competitors as part of negotiated agreements: Ameritech Ohio (Ameritech) and the Cincinnati Bell Telephone Company (CBT). Between these two providers, they furnish less than 31,000 UNE loops to CLECs operating in Ohio. No Ohio CLEC has requested access to the switch as an unbundled UNE, but CLECs have sought access to the switch as part of the UNE-platform.

A. Identification of UNEs on a Nationwide Basis

The FCC seeks comment on whether it should reinstate a "minimum set of UNEs that must be made available on a nationwide basis." NPRM at ¶¶ 13-14.

The PUCO endorses the approach that the FCC should establish a *flexible* set of UNEs, subject to State commission participation as outlined further below. As the FCC readily acknowledged in the NPRM, the application of the "necessary" and "impair"

standards may be relatively fact-intensive. NPRM at ¶ 12. Moreover, the PUCO believes (as is further discussed below) that the underlying decisions regarding specific market conditions are uniquely local in nature. Thus, the PUCO proposes that the FCC's list of UNEs be made available by incumbent LECs, absent any modification resulting from the fact-intensive determinations of State commissions regarding whether to add or subtract a particular UNE in a particular market given certain conditions (as further discussed below).

An integral component of the PUCO's position regarding the FCC's creation of a UNE list is that the list can be added to, or subtracted from, consistent with an FCC-designed set of criteria/guidelines. The fact that a particular UNE is on the FCC's list really means that there is a presumption that it generally meets the "necessary" and "impair" standards, which presumption can be rebutted where a proper showing is made. Similarly, if an UNE is not on the FCC's list, there is a presumption that it does not generally meet the "necessary" and "impair" standards.

The PUCO's recommendations in these comments to keep a certain UNEs on the FCC's standard list or to take a certain UNEs off of the FCC's standard list are made under the theory that the FCC's list can be changed, where justified, in a particular case. The PUCO's recommended approach in this case should not be interpreted to preclude a finding that all of the UNEs might be necessary to promote competition in a particular market (assuming a demonstration is made that satisfies the FCC's standards/guidelines in this regard). Thus, the PUCO recommends a model that would fully implement the FCC's duty to set forth criterion for determining access to UNEs,

while allowing for flexibility (exercised through State commissions) to promote local telephone competition based on local market conditions.

B. Criteria for Determining “Necessary” and “Impair” Standards

The NPRM sought more specific comments on what factors or criteria should be used in determining whether access to network elements is necessary and whether failure to provide such access would impair an entrant’s ability to provide service. Consistent with the Supreme Court’s decision, the NPRM includes several examples of issues to be addressed in this regard: (1) the significance and application of the “essential facilities” doctrine, (2) the availability of substitutes for incumbent LEC network elements outside the incumbent’s network (including any associated increase in cost or decrease in quality), and (3) other related points regarding economies of scale, penetration assumptions and particular market entry strategies. NPRM at ¶¶ 20-31.

The PUCO believes all of the factors listed in the NPRM should be considered and will briefly address them. It is clear that the Court wants the FCC to apply a more limiting standard on the development of a new UNE list. It is also clear that the Court, although apparently endorsing the essential facilities approach as a reasonable application of the statute, did not mandate that the FCC employ a strict “bottleneck facilities” approach. Thus, the PUCO maintains that it is appropriate for the FCC (with the assistance of State commissions) to utilize all of the major factors discussed in Paragraphs 20 through 31 of the NPRM.

Elsewhere in these comments, the PUCO advocates in detail the position that three of the UNEs from the FCC’s previous UNE list of seven be taken off of the new

flexible UNE list: operator services/directory assistance, switching and inter-office transport. Under the PUCO's proposal, the FCC's new UNE list would effectively be a rebuttable presumption of which UNEs must be provided. The presumption against offering an UNE that is not on the FCC's standard UNE list could be rebutted by a showing that demonstrates that the FCC's guidelines/factors are satisfied.

Although the PUCO does not propose a specific test for this purpose in these comments, it believes that the FCC should utilize all of the factors discussed in the NPRM to formulate a set of guidelines/standards that could be followed by State commissions. Of the factors discussed in Paragraphs 20-31 of the NPRM, the PUCO believes the most important factors are the availability and cost of UNE-type services provided by non-incumbent LEC sources (including the requesting carrier's self-provision of UNEs).

C. Application of Criteria to the List of Previously Identified Network Elements

The NPRM invites commenting parties to apply the criteria developed in their proposals to the list of seven UNEs previously identified in the *First Report and Order*. NPRM at ¶ 33. Consistent with the NPRM at Paragraphs 24-27, the PUCO asserts that, in determining the list of elements that incumbent LECs must provide on an unbundled basis pursuant to sections 251(c)(3) and 251(d)(2) of the Act, the FCC should take into consideration four major factors: (1) the availability of network elements outside the incumbent's network, (2) information on the costs of alternatives, the length of time it takes to obtain alternatives, and the extent to which alternatives to unbundled elements

are being utilized now, (3) potential alternative sources of network elements from other competing carriers, as well as availability of network elements through self-provisioning, and (4) the extent to which such factors as economies of scale, penetration assumptions, and the requesting carrier's particular market entry strategies should be considered as part of the "necessary" and "impair" analysis.

These four major factors should be considered by the FCC, as a threshold matter, to establish the FCC's standard list of UNEs. The four factors should also be incorporated into the FCC's guidelines/standards for future application by State commissions on a prospective basis, in order to determine whether the FCC's standard UNE list should be modified in a particular local market. In that context, the PUCO will address the previously identified UNEs, and briefly discuss some issues regarding sub-loop unbundling.

1. The Switch as an UNE

The Ohio Commission is of the opinion that among the list of UNEs previously defined by the FCC, the switch is an item that does not meet the "impair" standard. Currently, there are more than 20 CLEC local switches located in Ohio. Additionally, Ohio has approximately 14 facilities-based operation CLECs that are purchasing UNEs from ILECs. In Ohio, no CLEC is purchasing the unbundled local switching element. While, at least, one CLEC has requested the unbundled switch from an ILEC, it has only been in the context of the bundled "platform." When facilities-based CLECs have entered the local exchange market in Ohio, it appears that self-provisioning a switch is one of the first steps the CLEC takes.

There should be no dispute that a CLEC can maintain a local switch from sources other than the ILEC. Most notably, the CLEC can purchase a switch from a number of switch vendors. We are aware that switch vendors are attempting to capitalize on the CLEC switch market by offering smaller scaleable switches with significantly lower costs and attractive financing options to CLECs. The time necessary to deploy such switches has also been significantly reduced. Rather than installing a new switch a CLEC may also choose to convert and use a switch that perhaps, it already has as part of its IXC network. Since no CLEC has purchased the stand-alone unbundled local switch, yet facilities-based CLECs with local switches are operational, the Ohio Commission believes it would be difficult for a CLEC to argue that, unless the ILEC provides the switch, the CLECs ability to provide service is "impaired."

Perhaps another reason and indication why the unbundled local switch is not a required UNE is that CLECs are not entering the local market with a desire to follow the same network design of the ILECs. Many CLECs have touted the abilities of their efficient network designs and advanced switches to serve very large geographic areas. Unlike an ILEC that has historically had, at least, one switch in every exchange, a CLEC can choose to serve multiple exchanges, even multiple counties with a single switch. If a CLEC intends to use one switch to serve a territory that covers several ILEC exchanges it stands to reason that, at least, not every switch in the ILEC's territory is a necessary UNE for the CLEC.

Nevertheless, while the Ohio Commission believes there is a presumption that the unbundled local switch need not be provided by the ILEC, the infancy nature of

local competition makes us reluctant to simply say that the unbundled local switch can never meet the "impair" standard. We believe it would be more appropriate for the FCC to determine that there is a presumption that the unbundled local switch is not a required UNE. The FCC should then delegate to the states the authority to determine in arbitrated interconnection proceedings whether a CLEC has demonstrated that failure to receive a particular unbundled local switch from the ILEC will impair the CLEC's ability to operate in a specific geographic location. While the Ohio Commission believes that it would be difficult for a CLEC to make such a demonstration, we believe the door to such should not be closed at this time.

2. Transport as an UNE

In its First Report and Order in CC Docket 96-98, the FCC identified interoffice transmission facilities as an UNE. *See* Rule 319(d). In that same decision, the FCC also identified two types of interoffice transmission facilities, dedicated interoffice transmission facilities (known as dedicated transport) and shared interoffice transmission facilities (known as shared transport).

a. Dedicated Transport

The PUCO recommends that the FCC first consider the availability of the dedicated transport outside of the incumbent's network either from other non-incumbent carriers or through self-provisioning. Based on responses to the Ohio Commission's recent data request (mentioned earlier in these comments) to ILECs and CLECs, the following information was confirmed:

- Interoffice transport is available from non-ILEC carriers such as (CAPs, IXC's, and various CLECs) in many geographic areas.
- The majority of the CLECs self-provision interoffice transport in many geographic areas.
- Some CLECs purchase interoffice transport from non-ILEC carriers in some geographic areas.
- Some CLECs provide interoffice transport to other carriers in limited geographic areas.
- The ILECs providing UNEs have indicated the purchase of dedicated transport is limited as compared to other UNEs (*e.g.*, loops and database queries).

The PUCO maintains that it is evident from this information that dedicated transport is available, in many geographic areas in Ohio, to CLECs outside ILEC's network both through other non-incumbent carriers (CAPs, IXC's, and various CLECs) and through self-provisioning.

Concerning cost of alternatives and the length of time it takes to obtain the alternatives, we note that the FCC has opened the dedicated transport market to competition in the early 1990's, through the "expanded interconnection" decisions in CC Docket 91-141. As a result of the extent of alternative competitive providers for dedicated transport, the Ohio Commission believes it is reasonable to assume that the cost of the alternatives and the time it takes to obtain the alternative would be comparable due to competitive pressures in the marketplace. Consequently, excluding dedicated transport from the national list of unbundled network elements would not "impair" the CLECs' ability to provide services it needs to provide.

The Ohio Commission recommends the exclusion of the dedicated interoffice transmission facilities from the standard list of the unbundled network elements. The Ohio Commission also recommends, however, that the FCC afford the States flexibility to include dedicated transport in certain markets as a result of information provided in arbitration proceedings between CLECs and ILECs, only where a demonstration is made to the State commission that absence of the unbundled dedicated interoffice transport would "impair" the CLECs' ability to provide local telephone service.

b. Shared Transport

The FCC's shared transport facilities rules adopted in its *Third Report and Order* in CC Docket 96-98 (§ 47) require a carrier purchasing shared transport as a network element to provide local exchange service to purchase local switching also. Under the Ohio Commission's recommendation to exclude local switching from the FCC's standard list of the unbundled network elements, the provision of shared transport as an UNE would be rendered academic unless a proper demonstration is made to rebut the presumption that switching not be provided as an UNE. The Ohio Commission, therefore, recommends that States have the flexibility to add shared transport to the list on a specific geographic area basis through arbitration proceedings, only where a demonstration is made to the State commission that absence of the unbundled shared transport would "impair" the CLECs' ability to provide services.

3. Operator Services and Directory Assistance (OS/DA)

In reviewing OS/DA as an UNE, the FCC should first consider the availability of OS/DA outside of the incumbent's network, either from other non-incumbent carriers

or through self-provisioning. Based on Ohio-specific information submitted by both Ohio ILECs and Ohio facilities-based CLECs that are currently providing local exchange service in the state of Ohio, we found that OS/DA alternatives are readily available to CLECs. In Ohio, we have a number of certified Operator Service Providers (OSP) which provide OS/DA service. It is also apparent that many CLECs with IXC affiliates are self-provisioning OS/DA in Ohio.

Based on the separate availability of OS/DA, the PUCO has established a two-prong resale discount in arbitration proceedings. One of the resale discount rates available does not include OS/DA expenses and revenues. CLECs averred that they would self-provision OS/DA and that alternative providers for OS/DA are available. Therefore, they argued that to included OS/DA expenses in that wholesale discount calculation would unduly inflate the ILECs cost and reduce the discount it receive from ILECs when the CLECs resale the ILECs retail services.

If that argument holds true for resale discounts it seems reasonable that the same argument holds true in the context of whether the lack of OS/DA would "impair" CLECs' ability to provide local service. The Ohio-specific information, gathered for the purpose of these comments, confirms that OS/DA is widely available from non-ILEC carriers such as alternative operator service providers, IXCs, and various CLECs. It is also the case that a majority of CLECs self-provision OS/DA. Therefore, the Ohio Commission recommends the exclusion of the OS/DA from the FCC's standard list of UNEs, so that State commissions have the flexibility to add OS/DA to the list on a specific geographic area basis through arbitration proceedings, only where a proper

demonstration that absence of OS/DA would "impair" the CLECs' ability to provide local telephone services.

4. Unbundling of Local Loop

The FCC notes that in the CC 96-98 Local Competition proceeding, even incumbent LECs agreed that the local loop is a network element that must be unbundled pursuant to sections 251(c)(3) and 251(d)(2) of the Act. The FCC further indicates that it is its strong expectation that under any reasonable interpretation of the "necessary" and "impair" standards of section 251(d)(2), loops will be generally subject to the section 251(c)(3)-unbundling obligations. The FCC seeks comment on this analysis.

The FCC also indicates that nothing in the statute or the Court's opinion that would preclude it from requiring that loops that must be unbundled must also be conditioned in a manner that allows requesting carriers supplying the necessary electronics to provide advanced telecommunications services, such as digital subscriber line technology (xDSL). The FCC seeks comment on this analysis. NPRM at ¶ 32. In light of the Court's remand, the FCC seeks additional comment on whether network elements used in the provision of advanced services should be unbundled, as discussed in the Advanced Services proposal. NPRM at ¶ 35.

The Ohio Commission concurs with the FCC's conclusion that the local loop should be considered a network element that should be unbundled pursuant to Sections 251(c)(3) and 251(d)(2) of the Act. Moreover, we note that we have not encountered any ILEC in disagreement on this issue. Additionally, the FCC's CC 96-98 record is replete

with recommendations for various parties as to why the loop should be considered an UNE. Consequently, we will not rehash old arguments with respect to the most essential element on the list of seven UNEs. It is clear that the unbundled loop should be presumed to meet the "impair" standard.

The Ohio Commission notes, however, that over time the FCC's standard list of UNEs may be outmoded as a result of changing market conditions. Moreover, it is possible that, in certain narrowly-defined markets, the loop may even be available through various competitors in the near future. Consequently, the Ohio Commission requests that the FCC preserve the option that a State commission could eliminate even the loop, for particular geographic areas, due to changing market conditions if a demonstration can be made that loops no longer meet the "impair" standard.

a. Loop Conditioning/DSLAMs

The next question is whether loops should be conditioned in a manner that allows requesting carriers supplying the necessary electronics to provide advanced telecommunications services, such as digital subscriber line technology (xDSL). Like the FCC, the PUCO has determined that the definition of an unbundled loop includes: two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit digital signals in order to provide services such as Integrated Services Digital Network (ISDN), Asymmetrical Digital Subscriber Line (ADSL), High Bit-rate Digital Subscriber Line (HDSL), to the extent technically feasible.

We further agree that loop conditioning, which allows the loop the ability to provide certain advanced services, may in some circumstances require the ILEC to

remove load coils or bridged taps, or other modifications, as discussed by the FCC, in the *First Report and Order* in Docket 96-98, at Paragraph 380 and footnote 826. The PUCO believes this also includes the provisioning of or removing any necessary line cards or electronic equipment required in making loops capable for provision certain services, such as ISDN and xDSL. We also interpret paragraph 383 of the *First Report and Order* to require the ILEC to provision loops that are capable of provisioning digital services, but at the requesting carriers' expense.

The Ohio Commission questions, however, whether the provision of a loop that is capable of providing ADSL service is the same as providing ADSL service. In particular, we suspect that certain CLECs likely will argue that, at a minimum, the ADSL digital multiplexors (DSLAM) should be considered an unbundled element. The PUCO disagrees with this notion.

The DSLAM involves additional electronics added to a conditioned loop in order for the CLEC to provision a specific advanced telecommunications service. The DSLAM is a further conditioning of the loop and should not in itself be considered an UNE. As mentioned above, the cost of loop conditioning should be born by the requesting carrier. Consistent with our recommendation for removing the switch as an UNE, it is likely that CLECs would provide its own DSLAM, by cross-connecting the unbundled loop in a collocation space. Alternatively, the CLEC could locate the DSLAM at its own switch location.

Similarly, in provisioning an ADSL service to its end-users, a CLEC will in some manner need to locate a remote control device (modem) at the customer location.

Currently in Ohio, we have several ILECs offering ADSL service. Each ILECs offering the service is doing so differently from the other. For example, some ILECs require the end-user to purchase the remote device separately from a list of vendors, as one would a PC modem. In at least one other case, an ILEC provides the remote device bundled with the loop, locating it at the network interface device (NID).

In any case, once a CLEC has purchased a requested ADSL-capable loop, its choices are to request additional conditioning (DSLAM) of the ILEC, or provide its own DSLAM to be located in a collocated space or at its own switch location. This type of additional conditioning does not meet the "impaired" standard and, therefore, would not qualify as an UNE. The DSLAM would be properly characterized as a network improvement or network modification, which is clearly not merely an unbundling of the existing network.

b. Sub-loop Unbundling

The FCC seeks comment on whether, due to technology changes, it should require sub-loop unbundling at the remote terminal or at other points within the incumbent LEC's network. For example, unbundling the loop at the remote terminal or at other points with in the ILECs network. NPRM at ¶ 33.

Basically, there are two types of loops in the ILECs' networks: copper loops and fiber digital line carrier loops (DLC). One such technology change provided the Next Generation DLC (NGDLC). NGDLC loops may potentially offer the ability to further unbundle loops at remote digital terminals (RDT). As we consider unbundling at the RDT we must keep in mind that NGDLC loops only make up a small percentage of total

loops. Copper loops are still the dominant technology in Ohio. To date, in Ohio we have not seen evidence to suggest that copper loops can be unbundled in a technically feasible manner.

We must further keep in mind that many issues need to be addressed if it is determined that a sub-loop elements should be available at the RDT or any other cross connection point in the loop. Those CLECs that request this type of unbundling must have independent switching capabilities. A separate set of electronics and a second RDT maybe required and if so, will need to be located in a collocated arrangement or in the ILECs central office. One question that must be answered is who should be required to provide the additional electronic, RDT, and required space. It appears that each case may be different from the next.

These are issues that Ohio will likely need to determine in the next round of arbitrated interconnection arrangements. The FCC must also keep in mind that, like many other states, Ohio's ILECs do not all have the same loop technology. Many of Ohio's largest ILECs have DLC or NGDLC technology; however, due to the choice of vendors, the technologies function differently. Different technologies will require different unbundling considerations. It appears impossible to have a "one-size-fits-all" approach in Ohio. As a result, the PUCO fails to see how a one-size-fits-all approach possibly be implemented at the national level.

In the PUCO's Local Competition Guidelines (Case No. 95-845-TP-COI), Ohio has established a minimum list of UNEs, including loops. We further established that, upon a bona fide request (BFR), a certified facilities-based CLEC might request

interconnection at any technically feasible point beyond the minimum list of elements. We have determined that this includes sub-loop interconnection. Yet, to date, there have been no sub-loop BFRs.

The FCC and the PUCO have independently determined that, if the loop were not unbundled, certain CLECs likely would be impaired in its attempt to offer competitive local telephone service. Further unbundling the loops into sub-loop element may provide greater efficiency for the CLEC. However, we do not believe that a CLEC would be impaired if sub-loops are not generally offered as a standard UNE. The CLEC will have the ability to provided service over unbundled loops or request sub-loops though a BFR process. An additional alternative is to use existing coaxial TV cable, as AT&T and certain cable TV providers apparently plan to do. On the other hand, providing sub-loop elements in the manner requested by CLECs suggest that inefficiencies may occur in the ILECs public network. Ohio believes the States are best situated to determine these issues.

c. Loop Spectrum Unbundling

At this time, the PUCO believes that it is not necessary or reasonable to require the ILEC to further unbundle loops by spectrum. CLECs currently have the ability to request and receive unbundled loops and loop conditioning from ILECs for voice grade POTS and/or high-speed data service. There is no reason to assume that the CLEC could not provision advance telecommunication services over a conditioned loop to its end-user in the same manner as an ILEC.

The PUCO would further question whether spectrum unbundling lawfully falls under Section 251(2)(3) of the Act. In an ADSL service arrangement the high-speed data signal is bifurcated from the voice grade signal via a DSLAM. The data signal bypasses the public switch network while the voice grade signal travels over the public switch network.

The PUCO questions whether a signal, traveling over the local loop, but does not travel the public switch network can be considered for UNE status in the provision of a telecommunications service under Section 252(d)(2). It is also unclear how such an arrangement would be priced under the Act. Additionally, ILECs billing systems appear to be incapable of determining the usage on such a shared system. A CLEC's ability to offer local exchange telephone service is not impaired by not being able to offer an ADSL service.

d. Wiring from the property line to the individual floors of a multi-tenant structure

Parties were also requested to comment on situations where the incumbent LEC owns facilities on the end user's side of the network demarcation point and whether those facilities should be unbundled under section 251(c)(3). NPRM at ¶ 33.

The PUCO observes that the FCC's Part 68 inside wire rules adopted in CC Docket No. 88-57 allow ILECs to install regulated riser cable at the individual floors of a multi-tenant dwelling up to a point not to exceed 12 inches within each individual dwelling. Alternatively, the FCC's same rules also permit carriers to install regulated wiring up to a minimum point of entry to the property line at multi-unit dwellings. At

those locations where the ILEC has installed regulated wiring to each individual floor of the multi-unit dwelling, a facilities-based CLEC with loops to the property line may need access to the regulated riser cable to serve a particular customer at that location. The ILEC, however, could require the CLEC to purchase the entire loop as an UNE to gain access to the riser cable.

The Ohio Commission maintains that it is uneconomical to require the CLEC to purchase the entire loop (i.e., from the ILEC's central office to the customer) to gain access to the riser cable installed at the dwelling. Consequently, the Ohio Commission requests that the FCC afford the individual states the latitude to require ILECs to further unbundle the regulated loop to create a sub-loop element that would include wiring from the property line to the individual floors of a multi-tenant structure. As noted above, creating this sub-loop UNE would only be necessary where requested and at those locations where the ILEC elected to install regulated wiring to each floor of a multi-tenant dwelling.

D. Modifications to Unbundling Requirements

Once the FCC establishes the new standard list of UNEs, the question becomes how the UNE list can be modified in a particular situation to meet the "necessary" and "impair" test of Section 252(d)(2). Thus, the NPRM asks for comment on how the list of UNEs can be modified over time. NPRM at ¶¶ 36-40.

The Ohio Commission notes that the practical problem is how the FCC can possibly apply these factors on a prospective basis, given that each of the issues are fact-intensive and can change over time. Moreover, the underlying issues regarding specific

market conditions are uniquely local in nature. Thus, the PUCO submits, as referenced earlier, that the FCC should allow State commissions to modify the FCC's standard list of UNEs pursuant to general guidelines that are established by the FCC. In other words, as discussed above, the FCC should develop a test or series of factors that must be considered by State commissions when making a decision whether to add or subtract an UNE from the FCC's standard UNE list.

On a prospective basis, the dynamic technological, competitive and economic factors for determining whether competitors' provision of local telephone service would be impaired without a certain UNE are not generally amenable to a singular, conclusive nationwide determination by the FCC. They are largely fact-intensive or specific to a particular geographic region or market. State commissions are well-suited to make determinations based on local market conditions and to make adjudicative findings on fact based on a contested hearing process. As such, the FCC should establish the initial UNE list and delegate to States the ability to implement the guidelines/factors for modifying the UNE list in a particular case.

Not unlike the TELRIC methodology, that was developed by the FCC and must be applied by State commissions, State commissions would have to apply the FCC's guidelines regarding modification of the standard UNE list in order to reach a particular result in a particular case. This approach is consistent with the structure and purpose of the 1996 Act. Pursuant to Section 252(d)(2), the FCC clearly has authority to develop standards for determining which UNEs must be provided by incumbent LECs.

Under Section 261(c) of the 1996 Act, State commissions can impose additional requirements necessary to promote local telephone competition as long as those State regulations "are not inconsistent with" the FCC's regulations. Otherwise, State commissions are required to follow and implement FCC regulations in implementing Sections 251 and 252. Requesting carriers who wish to deviate from the FCC's standard UNE list could raise that issue in a Section 252 arbitration proceeding. The resulting decision can be appealed, under Section 252(e)(6), into a Federal district court for judicial review just like any other "determination" made by State commissions under Section 252.

CONCLUSION

The PUCO wishes to thank the FCC for the opportunity to file comments in this proceeding.

Respectfully submitted,

**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**



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